

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 340

Introduced by Senator Yee
(Coauthor: Senator DeSaulnier)
(Coauthor: Assembly Member Torlakson)

February 25, 2009

An act to add Article 9 (commencing with Section 17600) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as amended, Yee. Advertising: automatic renewal purchases.

Existing law prohibits any person with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, from making or disseminating or causing to be made or disseminated before the public in this state, or in any state, any statement concerning that property or those services that is untrue or misleading, and that is known to be untrue or misleading, or for any person to make or disseminate or cause to be made or disseminated a statement as part of a plan or scheme with the intent not to sell that property or those services so advertised at the price stated. A violation of these provisions is a crime, punishable by specified penalties, and a violation of those provisions is subject to specified civil liability.

This bill would require all printed marketing materials containing an offer with automatic renewal offer terms, as defined, to have all automatic renewal offer terms appear on an order form in the immediate proximity to the area on the form at which the customer selects the

subscription or purchasing agreement billing terms or where the subscription or purchasing agreement billing terms are described. The bill would require the order form to clearly and conspicuously disclose that the customer is agreeing to an automatic renewal subscription or purchasing agreement. The bill would impose similar requirements for any automatic renewal offer made over the telephone or on an Internet Web page.

The bill would require, in any automatic renewal offer, a business to clearly and conspicuously state the automatic renewal offer terms and obtain the customer's affirmative consent to those terms before fulfilling any subscription or purchasing agreement on an automatic renewal basis. The bill would also require ~~all marketing materials that offer~~ an automatic renewal subscription or purchasing agreement to clearly and conspicuously display a toll-free telephone number, *if available, or other specified means that* the customer could use for cancellation.

The bill would also prohibit a business from representing a product as free if the cost of the product is incorporated into the price of the accompanying item to be purchased under automatic renewal conditions.

A violation of these provisions would not be a crime, but would be subject to enforcement by any available civil remedies.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 9 (commencing with Section 17600) is
2 added to Chapter 1 of Part 3 of Division 7 of the Business and
3 Professions Code, to read:

4

5 Article 9. Automatic Purchase Renewals

6

7 17600. It is the intent of the Legislature to end the practice of
8 charging consumer credit cards without their explicit consent for
9 ongoing shipments of a product or ongoing deliveries of service.

10 17601. For the purposes of this title:

11 (a) "Automatic renewal" means a plan or arrangement in which
12 a subscription or purchasing agreement is automatically renewed
13 at the end of a definite term for a subsequent term.

14 (b) "Automatic renewal offer terms" means the following clear
15 and conspicuous disclosures:

1 (1) That the subscription or purchasing agreement will continue
2 unless the customer notifies the business to stop.

3 (2) That the customer ~~may cancel at any time~~ *has the right to*
4 *cancel*.

5 (3) That the customer will be billed, credit card charged, or
6 other appropriate description of the payment method ~~depending~~
7 ~~on the method described to the customer, or chosen by the customer~~
8 ~~on the front of the order form, and that the bill, charge, or other~~
9 ~~payment method will take place before the start of each new~~
10 ~~automatic renewal term~~.

11 (4) The length of the automatic renewal term *or that the renewal*
12 *is continuous*, unless the length of the term is ~~disclosed or~~ chosen
13 by the customer ~~on the order form~~.

14 (5) That the price ~~paid by the customer~~ for future automatic
15 renewal terms may change over time.

16 (6) The minimum purchase obligation, ~~if there is one~~ *any*.

17 ~~(7) All other material terms and conditions of the automatic~~
18 ~~renewal feature, if any.~~

19 (c) “Clear and conspicuous” or “clearly and conspicuously”
20 means a statement or communication, written or oral, presented
21 in a font, size, color, location, and contrast against the background
22 in which it appears, compared to the other matter with which it is
23 presented, so that it is readily understandable, noticeable, and
24 readable. ~~If that statement or communication modifies, explains,~~
25 ~~or clarifies other information with which it is presented, it must~~
26 ~~be presented so that it is in close proximity to the other information~~
27 ~~and in the same manner (audible or visible) so it is easily noticeable~~
28 ~~and readily understandable and it must not be obscured in any~~
29 ~~manner~~. With respect to any promotional materials communicated
30 through any nonprint medium, including such formats as telephone,
31 television, radio, CD-ROM, DVD, other electronic, magnetic, or
32 interactive media, audio disclosures shall be delivered in a volume
33 and cadence sufficient to be readily audible and understandable.

34 (d) “Customer” means a person who ~~responds to and~~ accepts
35 an offer or portion or features of an offer.

36 (e) “Marketing materials” include any offer, solicitation, script,
37 product description, publication, or other promotional materials,
38 renewal notice, purchase order device, fulfillment material, or any
39 agreement for the sale or trial viewing of products that are delivered
40 by mail, in person, television or radio broadcast, e-mail, Internet,

Internet Web page, or telephone or other telecommunication device, or appearing in any newspaper or magazine or on any insert thereto, or Internet Web page, Internet link or pop-up window.

17602. All printed marketing materials containing an offer with an automatic renewal term shall comply with the following:

(a) The customer's agreement to the automatic renewal offer terms shall be obtained in accordance with either paragraph (1) or (2) so that the customer is given the opportunity to expressly consent to the offer.

(1) All automatic renewal offer terms shall appear on the order form in immediate proximity to the area on the form at which the customer selects the subscription or purchasing agreement billing terms or where the subscription or purchasing agreement billing terms are described and the order form shall clearly and conspicuously disclose that the customer is agreeing to an automatic renewal subscription or purchasing agreement. The automatic renewal offer terms shall also appear on materials that can be retained by the customer.

(2) All of the following:

(A) On the front of the order form, the marketing materials shall (i) refer to the subscription or purchasing agreement using the term "automatic-renewal," *renewal* or "continuous renewal," (ii) clearly and conspicuously state that the customer is agreeing to the automatic renewal, and (iii) specify where the full terms of the automatic renewal offer may be found.

(B) The marketing materials shall clearly and conspicuously state the automatic renewal offer terms ~~on the first page or front side of the document in which they are placed, and these shall be~~ presented together preceded by a title identifying them specifically as the "Automatic Renewal Terms," "Automatic Renewal Conditions," "Automatic Renewal Obligations," "Continuous Renewal Service Terms," or other description of similar import. ~~However, the automatic renewal offer terms may appear on the reverse side of the order form if all of the following conditions are met:~~

~~(i) The subscription or purchasing agreement is being offered to the customer as part of a bundled offer from a bank on an application form for a new credit card.~~

~~(ii) All or substantially all of the terms of the credit card application are presented on the reverse of the application form.~~

1 (iii) ~~On the front of the application is a clear and conspicuous~~
2 ~~statement indicating that the customer has read and is agreeing to~~
3 ~~the terms of an “automatic renewal” subscription or purchasing~~
4 ~~agreement and that statement is in immediate proximity to both~~
5 ~~an affirmative action required by the customer, such as a signature~~
6 ~~or the checking of an unchecked box and a clear and conspicuous~~
7 ~~statement directing the customer to the automatic renewal offer~~
8 ~~terms on the back of the application form.~~

9 (iv) ~~The affirmative action required by clause (iii) of this~~
10 ~~subparagraph shall be in addition to the action taken by the~~
11 ~~customer indicating acceptance of the credit card application terms.~~

12 (v) ~~The automatic renewal offer terms are presented together~~
13 ~~preceded by a title identifying them as the “Automatic Renewal~~
14 ~~Terms,” “Automatic Renewal,” “Automatic Renewal Obligations,”~~
15 ~~or other description of similar import and are presented in a manner~~
16 ~~that conspicuously sets them apart from the credit card terms.~~

17 (vi) ~~When taken as a whole, the offer effectively conveys to a~~
18 ~~consumer that he or she is obtaining a product or service for which~~
19 ~~he or she may incur charges, and that the product or service is~~
20 ~~subject to automatic renewal.~~

21 (b) In addition to the requirements of subdivision (a) above, all
22 marketing materials that offer an automatic renewal, when viewed
23 as a whole, shall clearly and conspicuously disclose the material
24 terms of the automatic renewal offer and shall not misrepresent
25 the material terms of the offer.

26 (c) In addition to the requirements of subdivisions (a) and (b)
27 above, ~~all marketing materials that offer an automatic renewal~~
28 ~~shall clearly and conspicuously describe the methods by which~~
29 ~~the customer may cancellation policy and how to cancel, including,~~
30 ~~but not limited to, a toll-free telephone number and shall include~~
31 ~~in all marketing materials the toll-free telephone number that may~~
32 ~~be used for cancellation. telephone number if available, other~~
33 ~~telephone number, postal address, or electronic mechanism on the~~
34 ~~Internet Web site or a published page of printed material.~~

35 17603. In any automatic renewal offer made over the telephone,
36 a business shall clearly and conspicuously state the automatic
37 renewal offer terms prior to obtaining a customer’s consent and
38 payment information. The business shall obtain a clear affirmative
39 statement from the customer agreeing to the automatic renewal
40 offer terms after they have been stated to the customer. The

1 business shall send a written acknowledgment to any customer
2 who accepts an automatic renewal offer over the telephone, and
3 that acknowledgment shall contain the toll-free telephone number
4 *if available, other telephone number, postal address, or electronic*
5 *mechanism* for cancellation. An offer consisting of printed material
6 that directs the customer to a telephone number as the method of
7 ordering shall be considered an offer made over the telephone for
8 purposes of this title provided that, if the printed material contains
9 all of the automatic renewal offer terms, the business shall not be
10 required to send a written acknowledgment to customers of such
11 an offer.

12 17604. In any automatic renewal offer made on an Internet
13 Web page, the business shall clearly and conspicuously disclose
14 the automatic renewal offer terms prior to the button or icon on
15 which the customer must click to submit the order (the submit
16 button). In addition, in any automatic renewal offer made on an
17 Internet Web page on which the automatic renewal offer terms do
18 not appear immediately above the submit button, the customer
19 shall be required to affirmatively consent to the automatic renewal
20 offer terms, such as by clicking “OK,” checking an unchecked
21 box, or otherwise taking an affirmative action immediately adjacent
22 to the automatic renewal offer terms before the customer submits
23 the order. The automatic renewal offer terms shall be preceded by
24 a title identifying them as the “Automatic Renewal Terms,”
25 “Automatic Renewal Conditions,” “Automatic Renewal
26 Obligations,” “*Continuous Renewal Service Terms*,” or other
27 description of similar import. An offer consisting of printed
28 material that directs the customer to an Internet Web page as the
29 method of ordering shall be considered an offer made on an Internet
30 Web page for purposes of this title.

31 17605. In any automatic renewal offer, a business shall clearly
32 and conspicuously state the automatic renewal offer terms and
33 obtain the customer’s affirmative consent to those terms before
34 fulfilling any subscription or purchasing agreement on an automatic
35 renewal basis. In addition, all marketing materials that offer an
36 automatic renewal subscription or purchasing agreement shall
37 clearly and conspicuously display a toll-free telephone number the
38 ~~customer may use for cancellation.~~ *the cancellation policy and*
39 *how to cancel.*

1 17606. No business shall represent that a product is “free” if
2 the cost of the product is incorporated into the price of the
3 accompanying item to be purchased under automatic renewal
4 conditions.

5 17607. Notwithstanding Section 17534, a violation of this
6 article shall not be a crime. However, all available civil remedies
7 that are applicable to a violation of this article may be employed.

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